

<b>Office Action Summary</b>	<b>Application No.</b> 10/519,259	<b>Applicant(s)</b> SCHUTZ ET AL.	
	<b>Examiner</b> Marsha M. Tsay	<b>Art Unit</b> 1656	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5, 11-13 and 15-18 is/are rejected.
- 7) ☒ Claim(s) 1-4, 7-10 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>20090326A</u> .                          |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application  |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____.                          |

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The instant claims were discussed in a telephonic interview with Applicants' representative, Steven Highlander, on March 25, 2009. The instant claims are in condition for allowance except for some objections and indefiniteness issues; however, authorization of a proposed Examiner's amendment was not granted by Applicants.

Applicants' arguments have been fully considered and are deemed to be persuasive to overcome some of the rejections previously applied. Rejections and/or objections not reiterated from previous Office actions are hereby withdrawn.

Claim 6 is canceled. Claims 1-5, 7-18 are currently under examination.

Priority: The request for priority to GERMAN 103 07 793.6, filed February 24, 2003, and GERMAN 102 28 133.5, filed June 24, 2002, are acknowledged.

### **Objections and Rejections**

Claims 1, 4, 14 are objected to because of the following informalities:

in claim 1(b), it is suggested that the phrase "in the presence of divalent cations" be moved into claim 1(a), i.e. "incubating a sample in the presence of divalent cations with an isolated p12 bacteriophage tail protein..."

in claim 4(a), it is suggested that the phrase "in the presence of divalent cations" be deleted and that claim 4(a) recites "incubating a sample with or bringing a sample in contact with divalent cations and an isolated p12 bacteriophage tail protein, said p12 bacteriophage tail protein being ~~immobilised~~ immobilized on a permanent carrier, non-specifically or directly, ~~in the presence of bivalent ions,~~

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in claim 14, line 1, the term “bivalent” should be changed to “divalent”;

Appropriate correction is required.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5, 11-13, 15-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 5, it is unclear what is meant by a "chromatography column throughflow" method. The art accepted term is usually “flowthrough” method.

In claims 11, 13, 16, 18, the term “further” should precede the term “comprises” because as currently written, it appears as if the p12 bacteriophage tail protein naturally comprises a strep- or his- tag.

Claims 12 and 17 recite the limitation "the tag" in the claim. There is insufficient antecedent basis for this limitation in the claims and their parent claim. It appears that the dependency of claims 12 and 17 should be changed from claims 1 and 4 to claims 11 and 16, respectively.

In claim 15, the term “prebound” should precede the term “fluorescence-marked” in order to better clarify how the detection is made.

Claims 2-3, 7-10 also objected to because they are dependent on objected claims 1 and 4.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marsha M. Tsay whose telephone number is (571)272-2938. The examiner can normally be reached on M-F, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Maryam Monshipouri/

Primary Examiner, Art Unit 1656

March 26, 2009